



Missouri Department of dnr.mo.gov
NATURAL RESOURCES
Michael L. Parson, Governor Dru Buntin, Director

September 10, 2021

Dale Rhines Deputy Director
External Civil Rights Compliance Office
Office of General Counsel

Delivered electronically

Re: EPA Complaint No. 01RNO-20-R7 - Request for Information (RFI) #2

Dear Deputy Director Rhines:

Please find enclosed answers from the Missouri Department of Natural Resource (Department) to the U.S. Environmental Protection Agency (EPA) External Civil Rights Compliance Office's (ECRCO) Requests for Information #2 (RFI #2) regarding complaint number 01RNO-01RNO-20-R7.

The Department understands the purpose of your August 3, 2021 correspondence to be "to clarify some of the responses to RFI #1" and "address the following issue[s] that [ECRCO] accepted for investigation:"

Whether MDNR discriminated against a community of color, collectively hereinafter referred to as "Dutchtown" located in St. Louis, MO, on the basis of race, color and/or national origin in violation of Title VI of the Civil Rights Act of 1964, and EPA's implementing regulation, 40 C.F.R. Part 7, by issuing a Part 70 Intermediate Operating Permit Number OP2020-008 to the Kinder Morgan Transmix Company, LLC operations.

Whether MDNR has and is implementing the procedural safeguards required under 40 C.F.R. Parts 5 and 7 that all recipients of federal assistance must have in place to comply with their general nondiscrimination obligations, including specific policies and activities, for individuals with limited English proficiency (LEP) and individuals with disabilities, and whether the MDNR has a public participation policy and process that is consistent with Title VI and other federal civil rights laws and EPA's implementing regulation at 40 C.F.R. Parts 5 and 7.

(Issue #1 and Issue #2). The Department notes that many of the questions in RFI #2 are too indefinite and are not reasonably relevant¹ to any claim presented in either: (1) ECRCO's September 29, 2020 Letter of

¹ In agency decisions, the circuit court reviews the agency's decision under the standard articulated in the Administrative Procedure Act, 5 U.S.C. § 706(2). 49 U.S.C. § 31105(d).

Under this standard [the Eighth Circuit] must affirm the ARB's conclusions of law unless the same are arbitrary, capricious, an abuse of discretion, or otherwise contrary to law. 5 U.S.C. § 706(2)(A). [The Eighth Circuit] must also accept the agency's factual findings if they are supported by substantial evidence. 5 U.S.C. § 706(2)(E). "Substantial evidence is relevant evidence that a reasonable mind would accept as adequate to support the [agency's] conclusion." As long as the ARB correctly applied the law and the ALJ's "factual



Acceptance of Administrative Complaint, EPA Complaint No 01RNO-20-R7 (Letter of Acceptance), or (2) ECRCO's January 6, 2020 Request for Information #1 (RFI #1).

While the Department believes that the majority of the information sought is not reasonably relevant to Complaint No. 01RNO-20-R7 or the issues identified in the Letter of Acceptance as Issue #1 and Issue #2, the Department has provided answers to the extent they apply to Issue #1 (specifically, issuing an intermediate operating permit), and Issue #2 (to the extent there is content overlap). We have provided information at your invitation for ECRCO to consider while investigating the issues in this complaint.

If ECRCO is seeking additional information not reasonably relevant to the claims raised by Issues #1 and #2, as stated in the Letter of Acceptance and subsequently repeated, the Department respectfully requests to know whether and to what extent ECRCO's identified issues have changed. The Department notes that, pursuant to 40 C.F.R. § 7.115(b), ECRCO is directed to provide "the nature of [the] investigation" to the recipient. Separately, if ECRCO is willing to refine the questions posed to relate to Issue #1 (or #2), the Department is willing to re-evaluate our responses.

The Department takes its responsibility to follow federal civil rights law seriously. Nondiscrimination is not just the law, it is among our highest priorities. It is concerning that questions within the RFI #2 appear to accept as true the unsubstantiated allegations by the Complainant. This is particularly concerning because ECRCO has presented itself as a neutral fact-finder, but such a self-representation is inconsistent with action that assumes allegations are true.

As a result, the Department is compelled to reiterate the following: the Complainant has not presented any direct evidence that demonstrates that residents of Dutchtown disproportionately suffer health risks *from exposure to air toxics*. The Complainant has not provided *any* factual material or legal cause demonstrating the reissuance of the intermediate operating permit or the permit process subject to this investigation is a cause of exposure to air toxics, or a cause for increased health risks.

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findings are supported by substantial evidence on the record considered as a whole" we will affirm the ARB's decision "even though we might have reached a different decision had the matter been before us de novo.

Maverick Transp., LLC v. U.S. Dep't of Lab., Admin. Rev. Bd., 739 F.3d 1149, 1153 (8th Cir. 2014), as corrected (Jan. 17, 2014) (quotations and citations omitted). See also *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 619 (1966); *Sackett v. U.S. Envtl. Prot. Agency*, No. 19-35469, 2021 WL 3611779, at *12 (9th Cir. Aug. 16, 2021); *Hoyl v. Babbitt*, 129 F.3d 1377, 1383 (10th Cir. 1997).

Dale Rhines Deputy Director
Page Three

terminating a permit is causally related to a risk of exposure to air toxics, or causally related to an increased health risk. The Complainant has not, nor has ECRCO, provided any facts that the permit or this permit process is discriminatory, either intentionally or through disparate impacts.

The Department remains interested and willing to enter into an informal resolution agreement covering Issues #1 and #2. The Department understands that ECRCO decides whether the Department is compliant with applicable laws. The Department again asks ECRCO to provide confirmation of whether our previously identified changes are satisfactory to ECRCO. Additionally, the Department again respectfully asks ECRCO to identify any further, specific, actionable terms or criteria required by statute or regulation that in ECRCO's estimation are necessary for compliance. The Department is always willing to consider and discuss practical suggestions for compliance.

If you have any questions, please feel free to contact me at 573-751-5464, or by email at Jacob.Westen@dnr.mo.gov. Thank you.

Sincerely,

A handwritten signature in blue ink that reads "J Westen". The signature is stylized with a large, looped "J" and a cursive "Westen".

Jacob Westen
General Counsel

Enclosure

c: Lilian S. Dorka, Director, External Civil Rights Compliance Office
Angelia Talbert-Duarte, Associate General Counsel,
Civil Rights & Finance Law Office
Edward H. Chu, Acting Regional Administrator,
Deputy Civil Rights Official, EPA Region 7
Leslie Humphrey, Regional Counsel, EPA Region 7

Enclosure 1
EPA Complaint No. 01RNO-20-R7
Request for Information #2: Missouri Department of Natural Resources (MoDNR)

The Missouri Department of Natural Resources (MoDNR or Department) believes in the mission of the U.S. Environmental Protection Agency's (EPA) External Civil Rights Compliance Office (ECRCO) and has attempted to comply, within the allowances of State and Federal laws, with ECRCO's requests.

GENERAL OBJECTIONS:

Many questions within ECRCO's August 3, 2021, Request for Information #2 (RFI #2) are too indefinite and are not reasonably relevant, i.e., are of no apparent practical value in corroborating or refuting the claims raised by ECRCO for "Issue #1"² or "Issue #2" found within:

- ECRCO's September 29, 2020, Letter of Acceptance of Administrative Complaint, EPA Complaint No 01RNO-20-R7³ (Letter of Acceptance),
- ECRCO's January 6, 2020, Request for Information #1 (RFI #1),
- ECRCO's March 30, 2021, Partial Preliminary Findings for EPA Complaint No. 01RNO-20-R7 (Partial Preliminary Findings), and
- ECRCO's cover letter associated with this RFI #2.

The Department will answer the requests only to the extent they are not too indefinite and seek information reasonably relevant to the issues accepted for investigation, specifically, whether racial discrimination resulted from the reissuance of the Intermediate State Permit to Operate OP2020-008⁴ (Permit OP2020-008). ECRCO has already identified the issues for its stated investigation. ECRCO has not provided the Department notice of a new or altered claim, pursuant to 42 U.S.C. §§ 2000d-1, 2000d-2 and 40 C.F.R. § 7.115(b).

To the extent the requests within RFI #2 exceed the scope of Issue #1, **the Department objects to these requests** as not reasonably relevant to any claim, improperly seeking information not within the Department's possession or control, improperly calling for speculation, and improperly calling for legal conclusions. The Department will not provide responses to information sought that is outside the matters identified in the Letter of Acceptance.

Additionally, questions within ECRCO's RFI #2 are further improper by presupposing the Department's non-compliance with ECRCO's Title VI requirements. To the extent the requests

² In all of the following, Issue #1 is identified as: "Whether MDNR discriminated against a community of color, collectively hereinafter referred to as 'Dutchtown' located in St. Louis, MO, on the basis of race, color and/or national origin in violation of Title VI of the Civil Rights Act of 1964, and EPA's implementing regulation, 40 C.F.R. Part 7, by issuing an Intermediate Operating Permit Number OP2020-008 to the Kinder Morgan Transmix Company, LLC operations."

³ Letter from Lilian S. Dorka to Carol S. Comer (September 29, 2020). (Exhibit 1).

⁴ Intermediate State Permit to Operate OP2020-008, Air Pollution Control Program (March 10, 2020). (Exhibit 6).

within RFI #2 make such assumptions, either explicitly or implicitly, **the Department objects to these requests** as improperly calling for legal conclusions, argumentative, assuming facts not established, and failing to lay proper foundation to establish Department knowledge or control.

Finally, **the Department objects to these requests** contained within RFI #2 to the extent they are procedurally and legally improper requests for admissions. Nothing in 40 C.F.R Part 5, Part 7, or ECRCO's procedures authorizes such a discovery mechanism. Additionally, none of the requests structured as admissions are framed in clear, affirmative-or-negative statements that confirm a single fact or circumstance, as is required of requests for admissions.

The Department respectfully requests ECRCO maintain their previously stated position as a neutral fact finder and reframe their requests such that they are confined to the relevance as the requests relate to Issue #1 and Issue #2 and do not make improper requests. If ECRCO reconsiders and resubmits the requests, the Department will reevaluate its responses.

The Department answers the following requests subject to the general objections and without waiver of any rights or privileges thereunder. Further, the Department attempts to answer the requests, to the extent possible, that are definite in time and scope and reasonably relevant to the issues identified in Issue #1 and Issue #2.

Coordination with Local Government, Community Groups, and the State of Illinois

1. **(b)(7)(A) Enforcement**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b)(7)(A) Enforcement



(b)(7)(A) Enforcement



(b)(7)(A) Enforcement



(b)(7)(A) Enforcement



(b)(7)(A) Enforcement



(b)(7)(A) Enforcement

MoDNR Regulatory Enforcement Activities

(b)(7)(A) Enforcement



(b)(7)(A) Enforcement

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b)(7)(A) Enforcement



(b)(7)(A) Enforcement

Air Quality Permitting, Health Impacts, and Quality of Life

(b)(7)(A) Enforcement



(b)(7)(A) Enforcement



(b)(7)(A) Enforcement



(b)(7)(A) Enforcement



(b)(7)(A) Enforcement



(b)(7)(A) Enforcement



(b)(7)(A) Enforcement



(b)(7)(A) Enforcement



(b)(7)(A) Enforcement



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(b)(7)(A) Enforcement



(b)(7)(A) Enforcement



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(b)(7)(A) Enforcement



(b)(7)(A) Enforcement



Kinder Morgan Transmix Company, LLC (Kinder Morgan)

(b)(7)(A) Enforcement



(b)(7)(A) Enforcement



(b)(7)(A) Enforcement



(b)(7)(A) Enforcement

(b)(7)(A) Enforcement

EPA Complaint No. 01RNO-20-R7
Missouri Department of Natural Resources
Answers to Request for Information #2
Staff assisting with Answers (in alphabetical order)

Ed Galbraith
Director, Division of Environmental Quality
Division Director
About 21 years

Shelly Reimer
Rules and Projects Development Unit Chief
Supervise unit staff; Project management of
rulemakings and special projects
10 years

Kendall Hale
Permit Section Chief
Manages section staff; Oversees the review and
issuance of construction and operating permits.
22 years

Richard Swartz
Compliance and Enforcement Section Chief
Manages section staff; asbestos; testing and
emissions - stack test oversight, vapor recovery,
and Gateway Vehicle Inspection Program
(GVIP); Compliance and enforcement
20 years

Stephen Hall
Staff Director for the Missouri Air Conservation
Commission and Director of the Air Pollution
Control Program
(Previously Air Quality Analysis Section Chief)
Manage Air Pollution Control Program staff;
Implement Missouri Air Conservation Law and
the Clean Air Act in the state of Missouri
19 years